

REMARKS/ARGUMENT

Reconsideration Requested

Applicant has given careful consideration to the grounds of the primary examiner in objections as to minor informalities and rejections of applicant's specification and claims under 35 USC §§112, 102(b), and 103(a). A substantial portion of applicant's claimed subject matter stands effectively allowed. All amendments have been made herein for purposes of clarification of the specification and claimed subject matter, and enjoy full support of applicant's specification, claims, drawings, and abstract as filed; no new matter is included hereby. Applicant respectfully solicits reconsideration the primary examiner's objections and rejections. Each independent claim recites distinguishable features, as will be appreciated.

Objections to specification & claim 1 for minor informalities; Rejection under §112

Applicant's specification, page 9, has been amended herein to clarify as suggested by the examiner. Regarding the minor informality suggestion made by the examiner to claim 1, applicant respectfully requests that he not be required to make the minor readability change from "*a first, second, and third leg assembly*" to "*first, second, and third leg assemblies*"—and associated changes to his claims. As we know, the convention/guidelines in place governing the claiming of features in an utility app. require the use of the English language to describe innovative structure and function. For example, an article generally precedes a structural feature and then, when referring back to that particular feature, the same name is used preceded by either the word "the" or "said". If the spirit of these guidelines is met, there is no requirement to amend the claim language. Applicant submits the claims do meet the spirit of current claiming convention(s). In light of the current climate of less-yielding laws governing claim construction, and efforts by infringers to escape liability for infringement by indicating that a claim amendment—even if minor and done at the suggestion of an examiner for purposes of readability—may cloud construction of the amended feature, applicant respectfully requests that the minor readability objection be withdrawn. Regarding the rejection to distinctly claiming the article, clarification has been made to claim 2–3, with claim 4 having been made an independent claim.

Claim Rejections under 35 USC § 102 / Anticipation

Claim 1 stands rejected as being anticipated by both US Pat. N^o 2,493,978 ('978) issued to Kromer, as well as Pat. N^o 2,849,202 ('202) issued to McCombs. Missing in both of these patents is structure specified in amended claim 1, as has already been appreciated by the primary examiner by allowing subject matter covered in claims 5 and 19.

☒ each said leg assembly comprising a hinge-fitting interconnecting a first and second elongated subassembly, said hinge-fitting adapted to permit at least a pivot range of 170-degrees of rotation and to comprise a locking mechanism for holding said hinge-fitting in a direction;

As can be further appreciated, claims 2, and 10 – 12 depend from amended claim 1, and each of McCombs '202 and Kromer '987 are missing features claimed by applicant. Amended claim 20 incorporates features already considered patentable from claim 21.

Claim Rejections under 35 USC § 102 / Anticipation – Legal Summary

As we know: "For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference . . . These elements must be arranged as in the claim under review . . .," *In re Bond* (Fed. Cir. 1990). The Federal Circuit has reiterated that "[t]here must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention, [*Scripps Clinic & Research Foundation*]". A prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.* (Fed. Cir. 1987). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.* (Fed. Cir. 1986). An anticipation rejection under §102 can stand against a pending claim *only* if a single piece of prior art discloses a combination including *each* element of the pending claim such that each prior art element is identical to a corresponding, similar structurally-arranged element of the pending claim. This is not the case, here. Applicant's independent claims, as well as each dependent claim, recite combinations with features missing from Kromer '987 and McCombs '202

Reconsideration Requested of Claim Rejections under 35 USC § 103(a)

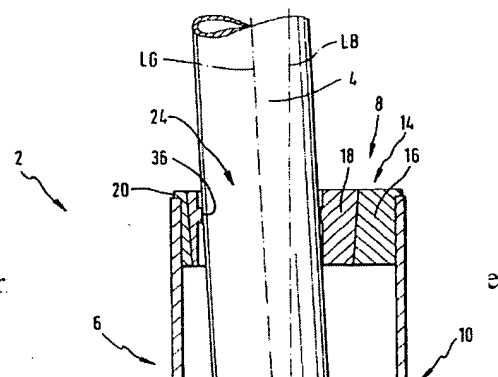
Claims 3 and 23 stand rejected under 35 USC §103(a) as being unpatentable over McCombs '202 in view of Pat. N^o 6,050,034 ('034) to Krinner. The inner member 18 and outer member 16 in Krinner are secured in a press-fit manner: "... inner member 18 is somewhat widened or expanded, when it is pushed into the object so that it is located on the object 4 by press-fit and cannot get out of place or lost." (col. 6, lines 3–6). Further, as repeatedly taught in Krinner '034 "... when the inner member 18 is pushed or forced sufficiently deeply into the support..." see col. 6, lines 29–32, col. 7, lines 59–62, col. 8, lines 60–63, the Krinner assembly of inner and outer members 18, 16 operate in concert as shaped, in a secured, stuck position:

col. 7, lines 30–40 of Krinner '034 state:

As the twisting of the inner member 18 with respect to 30 the outer member 16 and possibly of the outer member 16 with respect to the tubular section 6 is tight, because the outer member 16 preferably manufactured of synthetic material is pressed into the tubular section while the gap 28 35 first somewhat widened or expanded by the object 4 is compressed again and the inner member 18 likewise preferably made of synthetic material—possibly while compressing the gap 26—is pressed into the support aperture 22, the relative position adjusted by means of the attachment

hings of Kr

14



applicant's claimed device differs therefrom. There is nothing in McCombs '202 or Krinner '034 leading an artisan to conclude that either reference ought to be taken together with the other: McCombs makes no reference with respect to needing an insert, as pole 17 has the pair of collars 15, 16 arranged in vertically spaced relation and adapted to embracingly engage the pole (col. 1, lines 35–37). In fact, the collars 15 and 16 are bolted together around the pole and tightened to complete a snug setting up of the support (col. 2, lines 55–63). Further, the Krinner '034 teaches a wedged-in assembly 18, 16 pressed deeply into the shaft of the support. Applicant's claimed invention includes an insert—as discussed throughout his specification—shaped to releasably fit within an aperture of either the upper support or lower collar support:

☒ “. . . further comprising an insert having an inner-aperture shaped to accept an outer perimeter of the article, said insert shaped to releasably fit within said aperture of said upper support member.”

Claim Rejections under 35 USC § 103 – Legal Summary

It is a long-standing rule that, when determining the patentable nature of a claimed invention which has two or more elements “the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.” *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 221 USPQ 481, 488 (Fed. Cir. 1984). Teachings of the prior art simply cannot be combined when the prior art contains no suggestion or motivation to combine them. See *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 221 USPQ 929, 933 (Fed. Cir. 1984). There can be no suggestion to combine where a reference teaches away from its combination with another source. A reference may be said to ‘teach away’ when a person of ordinary skill, upon reading the reference, would be discouraged from following a particular path or would be led in a direction divergent from the path that was taken by the applicant (for example, if the reference is combined as has been done, it would produce a seemingly inoperative device). As the Federal Circuit reiterated, see *In re Fritch*, (Fed. Cir. 1992):

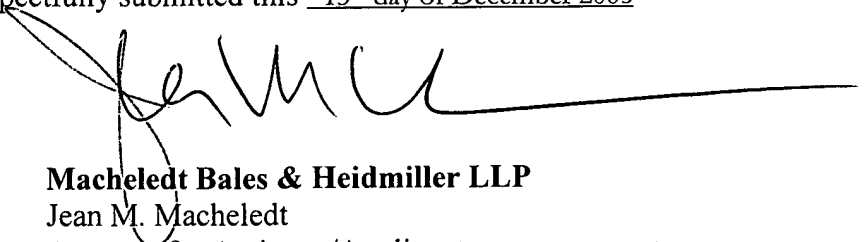
It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. . . . This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

One must look to see whether an artisan, with the references before him/her, could have made the claimed combination *without the exercise of invention*. Even if a primary reference *might be modified* by one skilled in the art to form the claimed structure, this does not make the modification obvious unless the prior art specifically suggests the desirability and details of the modification, see for reference *In re Laskowski* (Fed. Cir. 1989). It is known that a combination made up of elements taken piecemeal from separate references, where there is no teaching or suggestion to so combine, cannot properly be applied against a claimed invention to render it obvious within the meaning of 35 U.S.C. § 103.

Summary/Conclusion and Request for Reconsideration

With each cited reference **silent** as to certain claimed features, and no suggestion or teaching to modify, or to combine any of these references, applicant's claims are patentable and overcome the §§102 and 103 rejections. In sum, after careful consideration of the references, one can see that each fails to disclose, teach or suggest the instant unique claimed invention. A closer look reveals that the references each stop short of appreciating or providing any motivation to arrive at innovation claimed in applicant's independent claims. And, although each dependent claim depending from an independent claim containing patentable subject matter is also considered patentably distinct by way of including features of a respective patentable independent claim(s), applicant's dependent claims include further limitations not taught or suggested in any combination of the references cited and noted. Nothing can be found in the references to lead an artisan to try to combine them, and nothing indicates any need to do so. Applicants' claims overcome the examiner's §§112, 102 and 103 rejections; and as such, each is patentably distinct from the art, and contains allowable subject matter. Favorable reconsideration is respectfully solicited. Please do not hesitate to call the undersigned.

Respectfully submitted this 13th day of December 2005



Macheledt Bales & Heidmiller LLP

Jean M. Macheledt

Attorney for Assignee/Applicants

Reg. No 33,956

Phone: (970) 218-6798